IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3.12.2004

Coram

The Honourable Mr. Justice A.K.RAJAN

Writ Petition Nos.1505, 1511, 1519
and 1522 to 1524 of 1998

W.P. No.1505 of 1998

Vallalar Primary School,
Valayamadevi P.O.,
Via, Pinnalur, Chidambaram Tk,
rep. by its Secretary,
Sri.M.Kothandaraman .. Petitioner

Wps 1511/1998, 1519/1998

Shanmuganatha Aided Elementary School,
Akkadavalli, Panruty Taluk,
Cuddalore District reptd. By its
Secretary, Rajavel Gounder .. Petitioner in Wps 1511, 1519/1998

WP 1522/98

National Elementary School
Nallikuppam, Cuddalore District
reptd. By its Secretary
R.Balasubramaniam .. Petitioner

WP 1523/1998

Sri Ramalina Swamigal Aided
Elementary School, Panruty,
Cuddalore District, reptd. By its
Secretary, A.C.Jayaram .. Petitioner

WP 1524/1998

National Elementary School,
Thiruvathigai, Panrutti,
Cuddalore District, reptd. By
its Secretary,S.Arumugam .. Petitioner

Vs.

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1. The State of Tamil Nadu rep.by
   the Secretary to Government,
   Education Department,
   Fort St.George,
   Chennai - 9.
2. The Director of Elementary Education,
   College Road,
   Chennai - 6.
3. The District Elementary Educational
   Officer, Cuddalore. .. Respondents in all cases

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of calling for the records made in the impugned order O.Mu.No.

(1) Writ of certiorarified mandamus to call for the records of the third respondent order dated O.Mu.No.10432/97 and quash the same and directing the respondents to approve the appointment of Smt.K.Syamaladevi as secondary Grade Teacher w.e.f.29.8.97 with all consequential benefits (WP 1505/98)

(2) Writ of mandamus, directing the respondent to approve the appointment of Smt.N.Mahalakshmi as secondar grade Teacher w.e.f.26.11.97 with all consequential benefits. (WP 151/98)

(3) Writ of certiorari, calling for the records made in the impugned order Na.Ka.3181/A1/97 dated Nil.1.98 passed by the third respondent and quash the same. (WP 1519/98)

(4) Writ of certiorarified mandamus calling for the records made in the impugned order Na.Ka.No.10356/A4/97 dated 9.1.98 passed by the third respondent and quash the same and further direct the respondents to approve the appointment of Smt.J.Bala Saraswathy as secondary grade Teacher w.e.f.18.9.97 with all consequential benefits (WP 1522/98)

(5) Writ of certiorarified mandamus, calling for the records made in the impugned orer Mu.Mu.No.10330/A3/97 dated 9.1.98 passed by the third respondent and quash the same and further direct the respondents to approve the appointment of Smt.R.Jamuna as secondary grade Teacher w.e.f. 2.6.97 with all consequential benefits (WP 1523/98)

(6) Wirt of Certiorarified mandamus, calling for the records made in the impugned order O.M.U. No.12140/A2/97 dated 9.1.98 passed by the third respondent and quash the same and further direct the respondents to approve the appointment of Alice John of Arc as secondary grade Teacher w.e.f. 31.10.97 with all consequential benefits (WP 1524/98)

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For petitioner : R. Venkatakrishnan
(in all Writ Petitions)

For respondents:Mr.S.P.Prabhakaran
(in all Writ Petitions) Government Advocate

COMMON ORDER

In all these Writ Petitions, the petitioners pray this Court to direct the respondents to approve the appointment made by the petitioners with all consequential benefits from their date of appointment.

2. Since the issue raised in all these Writ Petitions is one and the same, the Writ Petitions are disposed of by this common order.

3. The grievance of the petitioners is that in the place of Scheduled Caste vacancy, backward class candidate was appointed for the reason that no qualified candidate was available from among the Scheduled Caste candidates. To that effect, a certificate has been obtained from the respective District Employment Exchanges as stated in the Writ Petitions. After appointing such persons, the School Authorities applied for approval and that approval was rejected. Hence the above Writ Petitions.

4. Earlier the said issue was raised before a Division Bench of this Court in W.A. No.734 of 1999, and by order dated 14.7.2000, in paragraphs 4 and 5, the Division Bench of this Court has held that,

> "4. Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules deals with qualifications, conditions of service of teachers and other persons. Rule 15 (9)(ii) is to the following effect.
>
> > "(ii) If a qualified and suitable candidate belonging to any of the Scheduled Caste and Scheduled Tribes or Backward Classes is not available for selection for appointment in the turn allotted for them in the cycle, the turn so allotted to the Backward Classes shall lapse and the vacancy shall be filled by the next turn in the order of rotation; but the turn so reserved for Scheduled Castes and Scheduled Tribes shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the numbers of Scheduled Castes and Scheduled Tribes candidates not available for selection against the turn reserved for them; all unfilled vacancies reserved for Scheduled Castes and Scheduled Tribes shall be

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carried over to the next recruitment and selection for appointment to that post in the next recruitment shall be made first for the carried over turn and then the normal rotation shall be followed. If qualified candidates are not available, even then the carried over turn shall lapse and the vacancy shall be filled by the next turn in the order of rotation."

If a candidate belonging to the Scheduled Caste and Scheduled Tribe is not available for selection or appointment the turn so reserved for Scheduled Caste and Scheduled Tribe shall not lapse and unfilled vacancy shall be carried over to the next recruitment and if even then no Scheduled caste candidate is available, another candidate can be appointed and selection for appointment to the next recruitment shall be made first for the carried over turn and then the normal rotation shall be followed. Or, in other words, such unfilled vacancy can be filled up only in the next recruitment if no Scheduled Caste candidate is available. What exactly meant by the words 'next recruitment' is not clear and nowhere in the rules those words are explained. If really the rule making authority intended those words to mean the 'next academic year', they would have stated so, instead of employing the words 'next recruitment'. We put a pointed question to the learned Government Pleader as to how the authorities have understood these words, the learned Government Pleader, on instructions from the respondents submitted that they have understood these words to mean 'next academic year'. Inasmuch as the words 'next recruitment' cannot be said to mean 'next academic year' we have to only proceed on the basis that the restriction if any imposed by employing the words 'next recruitment' has to be ignored on the ground that the same is vague. We carefully perused the judgment of the learned Single Judge and the learned Single Judge has not considered as to what the words 'next recruitment' convey.

5. Once we take such a view then the only order that has to be passed is to quash the impugned order of District Elementary Education Officer dated 5.3.1998 and consequently direct the respondent to consider the approval of the appointment of Tmt. Renukadevi with effect from 24.11.1997 ignoring that objection."

5. Since the said decision is directly on the point raised in these Writ Petitions, for the reasons stated therein, these Writ Petitions are allowed as prayed for. Consequently, there shall be a direction to consider the approval of appointment sought for by the petitioners with effect from the date of appointment of the candidates as stated in the Writ Petitions, ignoring the objection. The respondents shall

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comply with this direction within a month from the date of receipt of copy of this order. No costs.

asvm

Sd/-
Asst. Registrar

/True copy/

Sub. Asst. Registrar

To

1. The Secretary to Government,
   The State of Tamil Nadu
   Education Department,
   Fort St.George,
   Chennai - 9.

2. The Director of Elementary Education,
   College Road,
   Chennai - 6.

3. The District Elementary Educational
   Officer, Cuddalore.

+ 3 Ccs to Mr.R.Venkatakrishnan, Advocate SR 53072.

W.P.Nos.1505, 1511, 1519
and 1522 to 1524 of 1998

RI (CO)
EJ

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